



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 07143233

DATE: FEB. 3, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner, a computer software business, seeks to employ the Beneficiary as an applications developer. It requests classification of the Beneficiary as an advanced degree professional under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition on two grounds. The Director found that (1) the Beneficiary did not meet the minimum experience requirements of the labor certification to qualify for the job offered, and (2) the Petitioner did not establish its continuing ability to pay the proffered wage from the priority date onward.

On appeal the Petitioner submits a brief and additional documentation and asserts that the evidence of record overcomes the Director’s grounds for denial.

Upon *de novo* review, we will withdraw the Director’s finding with regard to the Petitioner’s ability to pay the proffered wage. We will remand the case to the Director for further consideration of whether the Beneficiary has the requisite experience under the terms of the labor certification to qualify for the proffered position.

## I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

## II. ANALYSIS

To qualify for classification as an advanced degree professional, the Beneficiary must have at least a U.S. master's or foreign equivalent degree, or a U.S. baccalaureate or foreign equivalent degree plus five years of progressive post-baccalaureate experience in the specialty. *See* 8 C.F.R. § 204.5(k)(1). The Beneficiary must also meet the specific educational, training, experience, and other requirements of the labor certification. 8 C.F.R. § 204.5(a)(2). All requirements must be met by the petition's priority date,<sup>1</sup> which in this case is August 13, 2018. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

### A. Requirements of the Labor Certification and the Beneficiary's Qualifications

The education, training, experience, and other requirements for the proffered position are set forth in section H of the ETA Form 9089. In this case section H has the following relevant entries with respect to the proffered position of applications developer:

- |       |   |   |
|-------|---|---|
| 4.    | Education: Minimum level required:                                  | Master's degree   |
| 4-B.  | Major Field of Study:   | Computer Science, Engineering, or related technical field |
| 5.    | Is training required in the job opportunity?                        | No  |
| 6.    | Is experience in the job offered required?                          | Yes   |
| 6-A.  | How long?   | 36 months   |
| 7.    | Is an alternate field of study acceptable?                          | Yes   |
| 7-A.  | If Yes, what field of study   | Same as 4-B (above)                                       |
| 8.    | Is an alternate combination of education and experience acceptable? | No  |
| 9.    | Is a foreign educational equivalent acceptable?                     | Yes   |
| 10.   | Is experience in an alternate occupation acceptable?                | Yes   |
| 10-A. | How long?   | 36 months   |
| 10-B. | What job title(s)   | Applications Developer-related occupation                 |
| 11.   | Job duties –  |   |

Analyze, design, develop, troubleshoot and debug software programs for commercial or end-user applications. Write code, complete programming and perform testing and debugging of applications. As a member of the software engineering division, perform detailed design based on provided design or external specifications. Assist in system planning, scheduling and implementation. Analyze system specifications and existing business processes and information systems. Build enhancements (including new product features) and resolve bugs. Build and execute unit tests and unit test plans. May review integration and regression test plans created by QA. Communicate and interact

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<sup>1</sup> The "priority date" of a petition is the date the underlying labor certification was filed with the Department of Labor. *See* 8 C.F.R. § 204.5(d).

with QA and porting engineering as necessary to discuss minor changes to product functionality and to ensure consistency, testability and portability across products in general.

14 Specific skills and other requirements:

Employer will accept Master's degree in Computer Science, Engineering or related technical field and three (3) years of work experience in job offered or three (3) years of work experience in an Applications Developer-related occupation. Position requires:

1. 2 years of experience with Database (Oracle, SQL, and/or MySql);
2. 2 years of experience with Java, J2EE, JavaScript, HTML, CSS, and JSON;
3. 2 years of experience with MVC (Hibernate/EclipseLink, and Spring) and Web server technologies (Weblogic, Apache and Tomcat);
4. 2 years of experience with Service-Oriented Architecture (SOA, REST, and WSDL) and microservices;
5. 2 years of experience with Machine learning and data mining;
6. 2 years of experience with Ant, shell scripts, build and server maintenance;
7. 2 years of experience with Unit testing frameworks, such as Junit and integration tests;
8. 2 years of experience with Geographic Information Systems.

Thus, the labor certification requires a master's degree or a foreign educational equivalent in computer science, engineering, or a related technical field. The record shows that the Beneficiary earned a master of science degree in computer and information science from [redacted] University in [redacted] Pennsylvania, in May 2014. Therefore, the Beneficiary meets the minimum educational requirement of the labor certification.

The labor certification also requires 36 months of experience as an applications developer or in an applications developer-related occupation, and specifies that this experience must include two years of experience in each of the eight technical areas identified in section H.14 of the labor certification. On the labor certification the Beneficiary attests that she met this requirement by virtue of her employment as (1) a technical staff/software developer for [redacted] University in [redacted] China, averaging 40 hours per week, from August 1, 2009, to July 31, 2011; and (2) as a teaching/research assistant for [redacted] University in [redacted], Pennsylvania, averaging 20 hours per week, from August 29, 2011, to December 14, 2013.

As evidence of this employment the record includes letters from the two educational institutions describing the Beneficiary's job duties and confirming her dates of employment and average hours of work per week. While stating that the Beneficiary's job at [redacted] University was qualifying experience, the Director found that the part-time employment with [redacted] University could not be counted in fulfilling the labor certification requirement because USCIS does not convert part-time work into full-time work for purposes of meeting an experience requirement in the labor certification. We have found, however, that part-time employment can count toward fulfilling labor certification

experience requirements.<sup>2</sup> Based on the employment verification letter from [ ] University we find that the Beneficiary's 28 months of half-time employment would equate to 14 months of full-time employment as a teaching/research assistant.

Thus, the Beneficiary's combined employment at [ ] University and [ ] University exceeds the 36 months of experience required by the labor certification in terms of length. We will remand this case to the Director, however, to consider the following issues.

The language in section H.14 of the labor certification appears to specify that "2 years of experience with" each of the eight technical areas is required. The Beneficiary's employment verification letter from [ ] University stated, in pertinent part, the following:

During [the Beneficiary's] employment at Information and Network Center, [ ] University, [the Beneficiary] demonstrated in-depth knowledge and experience in: Database (Oracle, SQL, and MySQL); Java, J2EE, JavaScript, HTML, CSS, and JSON; MVC (Hibernate/EclipseLink, and Spring) and Web server technologies (WebLogic, Apache and Tomcat); Service-Oriented Architecture (SOA, REST, and WSDL) and microservices; Machine learning and data mining; Ant, shell scripts, build and server maintenance; Unit testing frameworks, such as Junit and integration tests; Geographic Information System; Education Information System, version control with CVS, SVN, PHP.

While this letter indicates that the Beneficiary worked in all of the requisite technical areas during her two years and two months of employment at [ ] University, it does not clearly state whether she had two full years of experience in each of those areas, as section H.14 of the labor certification seems to require.

On remand the Director shall determine whether the Beneficiary's employment experience at [ ] University included the requisite amount of time in the specific technical areas identified in section H.14 of the labor certification. If deemed necessary, the Director may request further evidence relating to experience requirements in the specific technical areas, including the Petitioner's recruitment and how the job requirements were advertised to U.S. workers.

On remand the Director should also determine whether the Beneficiary's job at [ ] University was an "applications developer-related occupation" as required by the labor certification.

#### B. Petitioner's Ability to Pay the Proffered Wage

A petitioner must establish its ability to pay the proffered wage stated in the labor certification from the priority date onward. *See* 8 C.F.R. § 204.5(g)(2). As provided in the regulation, evidence of this

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<sup>2</sup> *See*, for example, the non-precedent decisions in *Matter of G-D- Corp.*, ID# 835847 (AAO May 3, 2018), and *Matter of T-R-S-*, ID# 1108577 (AAO Aug. 1, 2018), which draw on case law from the Board of Alien Labor Certification Appeals (BALCA). While BALCA decisions are not binding on the AAO, they are instructive on certain issues and may provide guidance in our adjudication of particular cases.

ability to pay shall be in the form of copies of annual reports, or federal tax returns, or audited financial statements, though other types of evidence may also be submitted such as profit/loss statements, bank account records, personnel records, and, in the case of a petitioner with more than 100 U.S. employees, a statement from a financial officer establishing its ability to pay the proffered wage.

The proffered wage in this case is \$104,270 per year, and the record shows that the Beneficiary has been employed by the Petitioner since before the priority date. The Director found that the Petitioner did not establish its ability to pay the proffered wage chiefly because it did not submit at least one form of primary evidence in accordance with 8 C.F.R. § 204.5(g)(2). Based on the entire record, however, and the totality of the Petitioner's circumstances,<sup>3</sup> we will reverse the Director's finding. After reviewing all pertinent documentation – which includes copies of an annual report (Form 10-K) filed by the Petitioner's parent, [REDACTED] with the U.S. Securities and Exchange Commission for the fiscal year ending on May 31, 2017, and excerpts from its Form 10-K for the fiscal year ending on May 31, 2018, which identify the Petitioner as a consolidated subsidiary; two letters from the Petitioner's corporate controller and chief accounting officer stating that the Petitioner has the ability to pay the proffered wage; the Beneficiary's Form W-2, Wage and Tax Statement, for 2018; and the Beneficiary's pay statements from August 2018 through February 2019 showing that his pay rate exceeded the proffered wage throughout this time period – we conclude that the Petitioner has established, by a preponderance of the evidence, its continuing ability to pay the proffered wage from the priority date onward. Accordingly, we will withdraw the Director's decision to the contrary.

### III. CONCLUSION

We will remand this case to the Director for further consideration of whether the Beneficiary has the requisite experience, including in the specific technical areas identified in section H.14 of the labor certification, to meet the terms of the labor certification and qualify the Beneficiary for the requested visa classification.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

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<sup>3</sup> See *Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).